

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0132P
Corporate Income Tax-Penalty
For the Period 2004

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ISSUE

I. Tax Administration—Penalty.

Authority: IC § 6-8.1-6-1; IC § 6-8.1-6-2; IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a corporation doing business in Indiana. On or before the April 15, 2005, deadline for filing an extension, Taxpayer paid approximately ninety-two percent of its finally-determined base tax liability. On October 17, 2005, Taxpayer paid the remaining eight percent of its tax liability, but did not pay interest on that payment amount.

The Indiana Department of Revenue ("Department") assessed interest and penalty on the entire eight-percent amount. Taxpayer submitted a protest, an administrative hearing was held, and this Letter of Findings results.

I. Tax Administration—Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to pay the proper amount of adjusted gross income tax prior to the deadline to file an extension.

Under IC § 6-8.1-6-1:

- (a) If a person responsible for filing a tax return is unable to file the return by the appropriate due date, he may petition the department, before that due date, for a filing extension. The person must include with the petition a payment of at least ninety percent (90 [percent]) of the tax that is reasonably expected to be due on the due date. When the department receives the petition and the payment, the department shall grant the person a sixty (60) day extension.
- (b) If a person responsible for filing a tax return has received an extension of the due date

and is still unable to file the return by the extended due date, he may petition the department for another extension. The person must include in the petition a statement of the reasons for his inability to file the return by the due date. If the department finds that the person's petition is proper and that the person has good cause for requesting the extension, the department may extend the person's due date for any period that the department deems reasonable under the circumstances. The department may allow additional, successive extensions if the person properly petitions for the extension before the end of his current extension period.

(c) If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90 [percent]) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date, or he may be subject to the penalties imposed for failure to pay the tax.

(d) Any tax that remains unpaid during an extension period accrues interest at a rate established under IC 6-8.1-10-1 from the original due date, but that tax will not accrue any late payment penalties until the extension period has ended.

Thus, a taxpayer who makes a payment of at least ninety percent of the ultimate tax liability for a year prior to the due date for that year's return is not subject to underpayment penalties unless the taxpayer fails to pay the difference at or prior to the extension deadline. If the payment is less than ninety percent of the ultimate tax liability for a year, the taxpayer is potentially subject to penalties.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, 45 IAC 15-11-2 further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer paid over ninety percent of its estimated tax liability prior to the due date. The extended due date was October 15, 2005. However, because October 15, 2005, fell on a weekend, IC § 6-8.1-6-2 extended the deadline to the next regular business day, which was October 17, 2005. On that date, Taxpayer paid an amount equal to its base tax liability, but did not pay the additional interest.

Under IC § 6-8.1-8-1.5, payments are applied to penalty first, then interest, then tax. As a result of the payment allocation, Taxpayer's first dollars of its payment were allocated to interest, with the balance being left to partially satisfy the base tax. With respect to the base tax credited by virtue of Taxpayer's payment, the penalty should not have been assessed, both because Taxpayer originally paid at least ninety percent of its base tax liability and because the remaining tax was paid prior to the due date. With respect to its underpayment (the interest amount), Taxpayer has provided sufficient information to justify penalty waiver.

FINDING

Taxpayer's protest is sustained.